

State of Colorado



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Governor

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Board Director

State Personnel Board
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AGENDA PUBLIC BOARD MEETING February 19, 2019

A public meeting of the Colorado State Personnel Board will be held on Tuesday, February 19, 2019 at 1525 Sherman Street, 1st Floor Conference Room 104, Denver, Colorado 80203. The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by February 14, 2019.

CALL TO ORDER

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR]

Agenda item pending until further notice.

II. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

- A. Flavio Quintana v. Department of Revenue, State Personnel Board case number 2018G090.

During Complainant's trial service period after being promoted, Respondent's Executive Director reverted him to his former certified class because of unsatisfactory job performance. Complainant filed a petition for hearing with the State Personnel Board alleging that he remained a certified state employee and that the reversion constituted an unjustified disciplinary action.

Respondent filed a Motion to Dismiss, arguing that the Board lacks jurisdiction to grant Complainant a discretionary evidentiary hearing.

On September 4, 2018, the Administrative Law Judge issued an Order Granting Respondent's Motion to Dismiss; dismissing Complainant's petition for hearing with prejudice.

III. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

A. Richard Paar v. Department of Corrections, Sterling Correctional Facility, State Personnel Board case number 2019G027.

Complainant, a terminated probationary employee petitions the Board to grant a discretionary hearing to review Respondent's termination for unsatisfactory performance. Complainant asserts the termination was discriminatory on the basis of race/color, gender, age, organizational membership and veteran's status. Complainant also asserts harassment and references the Whistleblower Act. As relief, Complainant requests reinstatement and an award of back pay and lost benefits.

Respondent denies Complainant's allegations and requests the Board to reject Complainant's petition for hearing and dismiss the matter.

On January 9, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be denied.

B. Leanna Bernabei v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel Board case number 2019G019.

Complainant appeals the termination of her probationary employment by Respondent, alleging sexual harassment, gender discrimination and retaliation. Complainant also alleges that her work schedule violated the FLSA; however, this allegation was not addressed in her information sheet and therefore is deemed abandoned. Complainant seeks reinstatement, removal of all documents concerning the termination of her employment from her personnel file, back pay and an award of attorney fees and costs.

Respondent argues that Complainant has failed to establish grounds that merit a hearing and that Complainant's petition for hearing and request for relief should therefore be denied.

On January 17, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be granted.

C. Jason Soltani v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2019G026.

Complainant seeks an evidentiary hearing to review his whistleblower complaint, arguing that Respondent's issuance of a performance improvement plan (PIP) constitutes retaliation for Complainant's disclosures regarding matters of public concern.

Respondent argues that Complainant failed to meet his burden of showing that grounds exist that merit a hearing and that Complainant cannot demonstrate a *prima facie* case of whistleblower retaliation. Respondent further argues that its revocation of the PIP originally imposed on Complainant; renders Complainant's

petition moot. Respondent requests that Complainant's petition for hearing be denied and dismissed with prejudice.

On January 25, 2019, the ALJ issued a Preliminary Recommendation that Complainant's petition for hearing be granted.

IV. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

There are no Initial Decisions or other Final Orders of the Administrative Law Judges for review.

V. REVIEW OF THE MINUTES FROM THE JANUARY 15, 2019 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

VI. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 15, 2019 PUBLIC MEETING:

- A. Derek Armentrout v. Department of Corrections, Division of Adult Parole & Community Corrections, State Personnel Board case number 2019S018.

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing and referred the matter to the State Personnel Director for a Director's review.

- B. Linda Torres v. Colorado State University at Pueblo, State Personnel Board case number 2018S039(c).

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny the petition for hearing and referred the matter to the State Personnel Director for a Director's review.

- C. Michelle Muller v. Department of Corrections, Colorado Board of Parole, State Personnel Board case number 2018B012.

No formal action taken.

VII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Status of Cases on Appeal to the Board and Appellate Courts
- Mandate in Singleton v. Dept. of Corrections, State Personnel Board case No. 2017B078, Court of Appeals No. 18CA1929

B. OTHER BOARD BUSINESS

Director's Report: Governor's appointment of Kara Vietch as DPA Executive Director. Ms. Vietch is the former Deputy Director of DPA. The position of State Chief HR Officer formerly held by Kim Burgess was recently posted for recruitment by DPA.

- C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS,
PERSONNEL ADMINISTRATORS, AND THE PUBLIC

VIII. PROPOSED LEGISLATION AND/OR RULEMAKING

IX. EXECUTIVE SESSION

ADJOURN:

2019 REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.

January 15, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
February 19, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
March 19, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
April 16, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
May 21, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
June 18, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
July 16, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
August 20, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
September 17, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
October 15, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
November 19, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203
December 17, 2019	Colorado State Personnel Board 1525 Sherman Street, 1st Floor Conference Room 104 Denver, CO 80203